

## REMARKS

### INTRODUCTION:

In accordance with the foregoing, claims 1, 4, 6, 7, and 8 have been amended. No new matter is being presented, and approval and entry are respectfully requested.

Claims 1, 4, 6, 7 and 8 are pending and under consideration. Reconsideration is respectfully requested.

### ENTRY OF RESPONSE UNDER 37 C.F.R. §1.116:

Applicants request entry of this Rule 116 Response and Request for Reconsideration because:

(a) it is believed that the amendments of claims 1, 4, 6, 7, and 8 put this application into condition for allowance;

(b) the amendments were not earlier presented because the Applicants believed in good faith that the cited prior art did not disclose the present invention as previously claimed;

(c) the amendments of claims 1, 4, 6, 7, and 8 should not entail any further search by the Examiner since no new features are being added or no new issues are being raised; and/or

(d) the amendments do not significantly alter the scope of the claims and place the application at least into a better form for appeal. No new features or new issues are being raised.

The Manual of Patent Examining Procedures sets forth in §714.12 that "[a]ny amendment that would place the case either in condition for allowance or in better form for appeal may be entered." ( Underlining added for emphasis) Moreover, §714.13 sets forth that "[t]he Proposed Amendment should be given sufficient consideration to determine whether the claims are in condition for allowance and/or whether the issues on appeal are simplified." The Manual of Patent Examining Procedures further articulates that the reason for any non-entry should be explained expressly in the Advisory Action.

### REJECTION UNDER 35 U.S.C. §112

In the Office Action, at pages 3-4, numbered paragraph 8, claims 1, 4, 6, 7 and 8 were rejected under 35 U.S.C. §112, second paragraph, for the reasons set forth therein. This rejection is traversed and reconsideration is requested.

Claim 1, and claims 4, 6, 7 and 8 in similar fashion, have been amended to show more clearly that the effective bandwidth is estimated based on a plurality of parameters includes a

round-trip time, a maximum segment size and either an adjustable congestion-evading congestion window size for a server terminal utilizing TCP or a number of simulated sessions for a server terminal utilizing UDP. Hence, amended claim 1 recites, in part: "the effective bandwidth estimated based on a plurality of parameters, wherein the parameters include ~~at least one of:~~

a round-trip time,  
a maximum segment size, ~~or~~ and  
one of:

(a) an adjustable congestion-evading congestion window size for a server terminal utilizing TCP, ~~or~~ and

(b) a number of simulated sessions for a server terminal utilizing UDP."

Hence, claims 1, 4, 6, 7 and 8 are now submitted to be clear under 35 U.S.C. §112, second paragraph.

#### **REJECTION UNDER 35 U.S.C. §103:**

In the Office Action, at pages 4-9, numbered paragraphs 11-14, claims 1, 4, and 6-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Jindal et al. (USPN 6,327,622; hereafter, Jindal) in view of "Dynamic Computation of TCP Maximum Window Size for Directly Connected Hosts" (hereafter, the IBM Technical Disclosure) and further in view of Martin (USPN 6,263,368; hereafter, Martin). The reasons for the rejection are set forth in the Office Action and therefore not repeated. The rejection is traversed and reconsideration is requested.

Claim 1 has been amended to recite, in part: "the effective bandwidth estimated based on a plurality of parameters, wherein the parameters include ~~at least one of:~~

a round-trip time,  
a maximum segment size, ~~or~~ and  
one of:

(a) an adjustable congestion-evading congestion window size for a server terminal utilizing TCP, ~~or~~ and

(b) a number of simulated sessions for a server terminal utilizing UDP."

Claims 4, 6, 7 and 8 have been amended in similar fashion. It is respectfully submitted that neither Jindal nor the IBM Technical Disclosure nor Martin recites a relaying apparatus for use in a network system, the network system including a plurality of client terminals and server terminals providing services to those client terminals via a network as set forth in amended claim 1 (and similarly in claims 4, 6, 7, and 8), wherein the route load measuring units each measures, as a load, an effective bandwidth of the route, the effective bandwidth estimated based on a

plurality of parameters, wherein the parameters include:

a round-trip time,  
a maximum segment size, and  
one of:

- (a) an adjustable congestion-evading congestion window size for a server terminal utilizing TCP, and
- (b) a number of simulated sessions for a server terminal utilizing UDP.

Please note that the third recited parameter depends on whether the server terminal utilizes TCP or UDP.

As is common in conventional technology (and described as the conventional approach on line 20 of page 10 through line 4 of page 11 of the specification), Jindal teaches away from the present claimed invention because Jindal includes information such as a number of network hops necessary to reach the server (Jindal, col. 6, lines 63-64), which tends to be inaccurate as to a distance involved. In contrast, the present invention computes a distance between the client terminal and the server terminal (page 11, lines 13-22, of the specification), providing a more accurate distance determination.

The IBM technical disclosure recites that computing window size for TCP connections is practical. However, the IBM technical disclosure does not recite any use of parameters such as a round-trip time or a maximum segment size. In fact, the IBM technical disclosure does not address any parameters with respect to UDP connections. Thus, there is no teaching or suggestion of combining of Jindal or Martin with the IBM technical disclosure. "Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight." See Dembiczak, 175 F.3d at 999, 50 USPQ2d at 1617. "Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." ACS Hosp. Sys. Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). Also, as admitted by the Examiner, neither the IBM technical disclosure nor Jindal explicitly shows a UDP delivery route. It is known to those skilled in the art that using a TCP delivery route is quite different from using a UDP delivery route. Hence, to simply lump together the IBM technical disclosure and Jindal does not provide the present claimed invention.

Martin shows measuring a network load by counting message packets. However, Martin does not recite a relaying apparatus for use in a network system, the network system including a plurality of client terminals and server terminals providing services to those client terminals via a network as set forth in amended claim 1 (and similarly in claims 4, 6, 7, and 8), wherein the route

load measuring units each measures, as a load, an effective bandwidth of the route, the effective bandwidth estimated based on a plurality of parameters, wherein the parameters include:

a round-trip time,  
a maximum segment size, and  
one of:

(a) an adjustable congestion-evading congestion window size for a server terminal utilizing TCP, and

(b) a number of simulated sessions for a server terminal utilizing UDP.

Thus, it is respectfully submitted that Martin does not recite the present claimed invention.

There is no teaching or suggestion of combining two non-UDP delivery type systems (the IBM disclosure and Jindal) with a UDP delivery type system (Martin). Even if combined, the inaccuracy introduced by Jindal by the use of counting a number of hops instead of measuring an actual distance would make the combination teach away from the present claimed invention. Thus, claims 1, 4, 6, 7 and 8 are submitted to be patentable under 35 U.S.C. §103(a) over Jindal et al. (USPN 6,327,622) in view of "Dynamic Computation of TCP Maximum Window Size for Directly Connected Hosts" and further in view of Martin (USPN 6,263,368).

#### **CONCLUSION:**

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot, and further, that all pending claims patentably distinguish over the prior art. Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited. At a minimum, this Amendment should be entered at least for purposes of Appeal as it either clarifies and/or narrows the issues for consideration by the Board.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited and possibly concluded by the Examiner contacting the undersigned attorney for a telephone interview to discuss any such remaining issues.

If there are any underpayments or overpayments of fees associated with the filing of this Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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